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OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/842,559
Applicant : Mark Rumer
Filed : April 25, 2001
TC/A.U. : 2663
Examiner : Jung, Min

Confirmation No. 7598

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OCT 27 2003

Technology Center 2000

Docket No. : 5166P008
Customer No. : 08791

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION RE NOTICE OF ABANDONMENT (37 C.F.R. 1.137)

Sir:

This Petition is filed in response to the Notice of Abandonment dated September 26, 2003, in the above-referenced patent application. As discussed below, all statutory and regulatory requirements for the Office letter were timely met and a Patent Office error was the sole reason for the issuance of the Notice of Abandonment. Accordingly, it is respectfully requested that (i) this petition be granted and the holding of abandonment be withdrawn, (ii) the fee for this petition be refunded, and (iii) the subject patent application be examined on the merits as quickly as possible so as to mitigate any harm to the applicant for the delay in such action.

Statement of Facts

On January 29, 2003, a Final Office Action regarding the subject patent application was issued by the USPTO. In that Office Action, all of the then-pending claims of the application were rejected in light of

FIRST CLASS CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

October 16, 2003

Date of Deposit

Patricia A. Balero

Name of Person Mailing Correspondence

Signature

Date

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OFFICE OF PETITIONS

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certain prior art. A true and correct copy of the Final Office Action is attached hereto as Exhibit A.

In response to the Final Office Action, a Request for Continued Examination (RCE) and an Amendment After Final were filed on April 29, 2003. A true and correct copy of that RCE and amendment are attached hereto as Exhibit B. As shown by the stamped return receipt postcard (a true and correct copy of which is attached hereto as Exhibit C), the RCE and amendment were received in the USPTO on May 6, 2003.

Subsequently, on September 26, 2003, a Notice of Abandonment for the subject application was issued. A true and correct copy of the Notice of Abandonment is attached hereto as Exhibit D. The Notice of Abandonment states that the reason for abandonment of the subject patent application is "Applicant's failure to timely file a proper reply to the Office letter mailed on January 29, 2003."

Argument

The Notice of Abandonment (Exhibit D) recites as the reason for abandonment the failure to respond to the Final Office Action. That Office Action was mailed January 29, 2003. Hence, the 3-month period for response expired on April 29, 2003.

Within this period for reply, a timely RCE and amendment responding to the Final Office Action were filed. See Exhibit B. Therefore, the Notice of Abandonment never should have been issued. Such issuance was an error on the part of the USPTO.

Because the abandonment of the present application occurred solely as a result of a USPTO error, the fee for this petition should be refunded. Refund may be made to our deposit account 02-2666.

For all the foregoing reasons, it is respectfully requested that this petition be granted, the Notice of Abandonment be withdrawn and the subject patent application be examined on the merits. Because the abandonment was due to an error on the part of the USPTO, it is further requested that the term of the subject patent, once issued, be extended to account for the delay in issuance due to

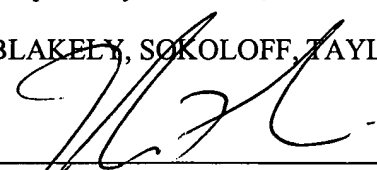
this error and also that the fee for this petition be refunded. Please charge any deficiencies of fees associated with this communication to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 10/16, 2003

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA. 90025-1026
(408) 947-8200



Tarek N. Fahmi
Reg. No.: 41,402

List of Exhibits

Exhibit **Description**

- | | |
|---|---|
| A | Final Office Action, dated January 29, 2003. |
| B | Request for Continued Examination and Amendment After Final filed April 29, 2003. |
| C | Return Receipt Postcard for Amendment After Final, stamped by the USPTO on May 6, 2003. |
| D | Notice of Abandonment, dated September 26, 2003 |



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,559	04/25/2001	Mark Rumer	05166P008	7598

8791 7590 01/29/2003

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD, SEVENTH FLOOR
LOS ANGELES, CA 90025

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FEB 04 2003
STATUS DB-LA

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BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
LOS ANGELES

EXAMINER

JUNG, MIN

ART UNIT PAPER NUMBER

2663

DATE MAILED: 01/29/2003

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OCT 22 2003

OFFICE OF PETITIONS

Please find below and/or attached an Office communication concerning this application or proceeding.



Due date 4/29/2003 Client Name Occam Networks

Docket Initial ME 5166 . P008
Dock. Sup. Initial RW TNF RDM

Atty/Initial

Pat/Ser/Reg 842,559

3 x

Description

Response due final OA and possible appeal

2/4/2003

Michelle Edmund

Due date 3/29/2003 Client Name Occam Networks

Docket Initial ME 5166 . P008
Dock. Sup. Initial RW TNF RDM

Atty/Initial

Pat/Ser/Reg 842,559

4

Description

Two months since final oa was mailed

2/4/2003

Michelle Edmund

Due date 4/29/2003 Client Name Occam Networks

Docket Initial ME 5166 . P008
Dock. Sup. Initial RW TNF RDM

Atty/Initial

Pat/Ser/Reg 842,559

155

Description

If advisory action or notice of allowance not received by today,
review file for possible filing of continuation application.

2/4/2003

Michelle Edmund

Due date 4/22/2003 Client Name Occam Networks

Docket Initial ME 5166 . P008
Dock. Sup. Initial RW TNF ~~DEA~~ RDM

Atty/Initial

Pat/Ser/Reg 842,559

156

Description

Reminder, review file for possible filing of continuation application
if advisory action or notice of allowance not received by 4/29/2003

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NOV 10 2003

2/4/2003

NOV 10 2003

Michelle Edmund

OFFICE OF PETITIONS



Office Action Summary

Application No.

09/842,559

Applicant(s)

RUMER, MARK

Examiner

Min Jung

Art Unit

2663

27

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6,7,9-11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,7,9-11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 07 November 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:



DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, line 3, it is not clear whether the "data" is the same "data" written into the first buffer, or it is different (subsequent) data which follows after the data (first recitation) is written into the first buffer.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 6-7, 9-11, 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vargo et al., US 6,477,164 (Vargo) in view of Jeng, US 5,892,768 (Jeng).

Vargo discloses a system and method for real-time data and voice transmission over an Internet network. Specifically, Vargo teaches of sending PSTN voice data by

packetizing and transmitting it over Internet to a destination voice terminal. See Abstract. Therefore, Vargo teaches the method of packetizing data from an inbound TDM stream as a packet having a header which includes TDM block identification information. See col. 4, lines 18-44. What Vargo fails to teach is the Packetization into an Ethernet packet. Vargo does not specify the packet format because Vargo's teaching is implemented on Internet which can include many different kinds of networks including Ethernet. Vargo suggests that his teaching can be implemented using different kinds of networks by stating; "Those skilled in the art will recognize that the transmuxes 124 and 126 may also be interconnected via an alternative network." (col. 3, line 66 – col. 4, line 1). While Vargo lacks specific teaching of Ethernet packet, Jeng teaches a converter which converts T1 frame into Ethernet packet. See Abstract. Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to implement Vargo's transmission technique using Ethernet (alternative network) as a backplane as suggested in Vargo's own teaching, and as specifically taught by Jeng in his teaching of T1 to Ethernet packet converter, to provide voice communication using PSTN (TDM) with added flexibility by facilitating the communication using Ethernet backplane.

Further, Vargo teaches the packet format including a first field (305) for writing voice data, and a second field (303 and 204) including destination field (destination PSTN address) and block identification field (sequence number).

Vargo further teaches receiving voice packets containing a plurality of gateway subpackets, and temporarily storing the subpackets in a packet input buffer 602. See col. 6, lines 5-12. From this teaching, it is clear that there are a plurality of buffer spaces

in the buffer 602 for storing a plurality of packets, therefore, reading on the present limitations directed to the writing of data to a first buffer and to a second buffer.

Response to Arguments

5. Applicant's arguments with respect to claims 1-4, 6-7, 9-11, 13-15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

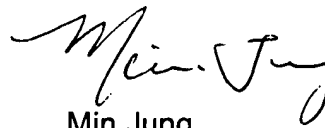
7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Cave patent, 6,175,562, the Rosenberg patent, 6,304,567, and the Petersen patent, 5,805,588 are cited for further references.

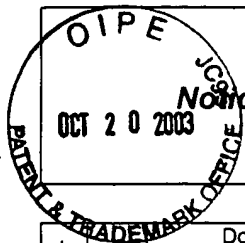
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Min Jung whose telephone number is 703-305-4363. The examiner can normally be reached on Monday-Friday, 7AM-3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on 703-308-5340. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4750.

MJ
January 25, 2003


Min Jung
Primary Examiner



Notice of References Cited

Application/Control No. 09/842,559	Applicant(s)/Patent Under Reexamination RUMER, MARK	
Examiner Min Jung	Art Unit 2663	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6,477,164	11-2002	Vargo et al.	370/356
	B	US-5,805,588	09-1998	Petersen, Lars-Goran	370/356
	C	US-6,175,562	01-2001	Cave, Ellis K.	370/352
	D	US-6,304,567	10-2001	Rosenberg, Jonathan David	370/356
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



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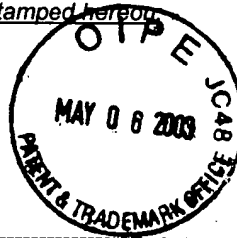
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
LOS ANGELES

Application No.: 09/842,559 Filing Date: 4/25/2001 Docket #: 005166.P008
Date Mailed: 04/29/2003 Due Date(s): 04/29/2003
Client: OCCAM NETWORKS Atty/Sec: TNF/MCM/jls
Title: ETHERNET BASED TDM SWITCH

First Named Inventor: Mark Rumer

The following has been received in the U.S.P.T.O. on the date stamped hereon.

Amendment: After Final (8 pgs)
Certificate of Mailing
Fee Transmittal (original & copy)
Request for Continued Examination (RCE)
Transmittal Letter
Check No. 1918 in the amount of \$750.00
Postcard

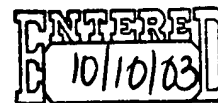


Assignee: Occam Networks

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,559	01/24/2001	Mark Rinder	051661008	7598

8791 7590 09/26/2003

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LOS ANGELES, CA 90025

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SEP 29 2003

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
LOS ANGELES

EXAMINER

JUNG, MIN

ART UNIT PAPER NUMBER

2663

DATE MAILED: 09/26/2003

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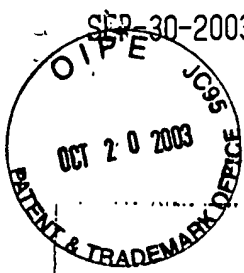
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OFFICE OF PETITIONS

**Notice of Abandonment**

Application No.

09/842,559

Examiner

Min Jung

Applicant(s)

RUMER, MARK

Art Unit

2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on 29 January 2003.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.54(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

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NOV 10 2003

OFFICE OF PETITIONS

Min Jung
MINJUNG
PRIMARY EXAMINER

Provisions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to avoid any negative effects on patent term.